

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT
DECISION NO. 6135 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

HELEN K. MARTIN

PRECEDENT
BENEFIT DECISION
No. P-B-238

S.S.A. No.

FORMERLY BENEFIT DECISION No. 6135
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The above-named claimant appealed from a determination of the Department of Employment which held that the claimant was ineligible for benefits under Section 58.1 of the Unemployment Insurance Act /now section 1264 of the Unemployment Insurance Code/. On March 26, 1954, the California Unemployment Insurance Appeals Board set aside the decision of the Referee (LA-63174) and removed the matter to itself under Section 1336 of the Unemployment Insurance Code.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed as a waitress in a cafe at Redondo Beach, California. This employment terminated on July 15, 1953, under circumstances hereinafter set forth.

On October 22, 1953, the claimant registered for work and filed a claim for benefits in the Torrance Office of the Department of Employment. On November 12, 1953, the Department issued a determination which held the claimant ineligible to receive benefits commencing

October 22, 1953, based upon a finding that she had left her employment because of domestic duties within the meaning of Section 58.1 of the Act /now section 1264 of the code/. The claimant appealed to a Referee who, in the decision which we have set aside, reversed the determination of the Department on the ground that the provisions of Section 58.1 of the Act /now section 1264 of the code/ were not applicable.

The claimant resigned her employment on July 15, 1953, because of a family emergency. She explained the circumstances of her leaving in a signed statement which reads as follows:

"My mother, living in Texas, had a heart attack and I received a telegram asking me to come home because she was not expected to live. I telephoned my employer to tell I had to go to Texas. I told them I would be back as soon as I could. They did not say anything. They could not hold my job open because as a waitress I would have to be replaced as soon as possible. When I got back a week later they had already filled the spot."

The claimant's husband is the major support of the family. The claimant obtained other work as a waitress on December 18, 1953, and did not claim benefits thereafter.

REASON FOR DECISION

Section 58.1 of the Unemployment Insurance Act (now section 1309 of the Unemployment Insurance Code) /now section 1264 of the code/ provides in part as follows:

"Notwithstanding any other provision of this act, an employee . . . whose marital or domestic duties cause him or her to resign from his or her employment shall not be eligible for unemployment insurance benefits for the duration of the ensuing period of unemployment and until he or she has secured

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bona fide employment subsequent to the date of such voluntary leaving; . . .

"The provisions of this section shall not be applicable if the individual at the time of such voluntary leaving was and at the time of filing a claim for benefits is the sole or major support of his or her family."

Section 209.1 /now section 1264-17 of Title 22 of the California Administrative Code, adopted by the Director of Employment to implement Section 58.1 of the Act (now section 1309 of the Unemployment Insurance Code) /now section 1264 of the code/ provides as follows:

"(a) 'Marital Duties' include all those duties and responsibilities customarily associated with the married status.

"(b) 'Domestic Duties' include those duties which relate to the health, care, or welfare of the family or household and other duties reasonably required for the comfort and convenience of the family or household.

"(c) 'Family', for the purposes of this section, means spouse, or parent, child, brother, sister, grandparent, or grandchild, of either spouse, whether or not the same live in a common household.

"(d) 'Major Support' of a family shall be presumed to be the family members, in the order provided below:

"(1) The husband or father.

"(2) The wife or mother in any family in which there is no husband or father.

"Notwithstanding the above provisions, in any case in which a member of a family as defined above can show that he or she is providing the major means of support (more than one-half) then that individual shall be

deemed the major support of the family. No more than one person may be the major support of the family."

In this case it is clear that by virtue of the definitions contained in Section 209.1 /now section 1264-17 of Title 22 of the California Administrative Code, the claimant left her work because of domestic duties (Benefit Decision No. 6111). Since she was not the major support of the family, she is ineligible for benefits under Section 58.1 of the Act /now section 1264 of the code/ in accordance with its provisions. Whether the employment obtained by the claimant on December 18, 1953, was bona fide is not an issue presently before us since the claimant has not claimed benefits since obtaining this work. If the claimant subsequently loses this employment and seeks to obtain benefits under the Code, the issue will then be a matter for the Department to determine.

Since the claimant herein left her work because of the emergency nature of her mother's illness, we hold that she was not subject to disqualification under Section 58(a)(1) of the Act /now section 1256 of the code/ (Benefit Decisions Nos. 5429 and 6111).

DECISION

The determination of the Department is affirmed. Benefits are denied.

Sacramento, California, April 23, 1954.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

EDWARD CAIN

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 6135 is hereby designated as Precedent Decision No. P-B-238.

Sacramento, California, February 17, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT